



7020-02

INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-804

CERTAIN LED PHOTOGRAPHIC LIGHTING DEVICES AND COMPONENTS THEREOF

COMMISSION'S FINAL DETERMINATION FINDING A VIOLATION OF SECTION 337; ISSUANCE OF A GENERAL EXCLUSION ORDER; TERMINATION OF CERTAIN RESPONDENTS BASED ON CONSENT ORDER; ISSUANCE OF CONSENT ORDER; AND TERMINATION OF THE INVESTIGATION

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 in this investigation and has issued a general exclusion order prohibiting importation of infringing LED photographic lighting devices and components thereof. The Commission has also determined to terminate certain respondents on the basis of a consent order stipulation, and has issued a consent order.

FOR FURTHER INFORMATION CONTACT: Amanda S. Pitcher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2737. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>, and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic

docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 7, 2011, based on a complaint filed by Litepanels, Inc. and Litepanels, Ltd. (collectively, “Litepanels”). 76 *Fed. Reg.* 55416 (Sept. 7, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain LED photographic lighting devices and components thereof that infringe certain claims of U.S. Patent Nos. 7,429,117 (later terminated from the investigation); 7,510,290 (later terminated from the investigation); 7,972,022 (“the ’022 patent”); 7,318,652 (“the ’652 patent”); and 6,948,823 (“the ’823 patent”). *Id.* The Notice of Institution named respondents Flolight, LLC. (“Flolight”), of Campbell, California; Prompter People, Inc. (“Prompter”) of Campbell, California; Ikan Corporation (“Ikan”), of Houston, Texas; Advanced Business Computer Services, LLC d/b/a Cool Lights, USA (“CoolLights”) of Reno, Nevada; Elation Lighting, Inc. of Los Angeles, California (“Elation”); Fuzhou F&V Photographic Equipment Co., Ltd. (“F&V”), of Fujian, China; Fotodiox, Inc. of Waukegan, Illinois, Yuyao Lishuai Photo-Facility Co., Ltd. of Zhejiang Province, China, Yuyao Fotodiox Photo Equipment Co., Ltd. of Zhejiang Province, China, and Yuyao Lily Collection Co., Ltd. of Yuyao, China (collectively the “Fotodiox respondents”); Shantou Nanguang Photographic Equipment Co., Ltd. (“Nanguang”), of Guangdong Province, China; Visio Light, Inc. (“Visio”), of Taipei, Taiwan; Tianjin Wuqing Huanyu Film and TV Equipment Factory of Tianjin,

China (“Tianjin”); and Stellar Lighting Systems (“Stellar”), of Los Angeles, California.

Id. A Commission Investigative Attorney (“IA”) of the Office of Unfair Import

Investigations also participated in this investigation.

Visio, Nanguang, and F&V were terminated based on entry of consent orders, Elation was terminated based upon a settlement agreement and Tianjin was found in default. *See* Notice of Commission Determination Not to Review an Initial Determination Terminating the Investigation as to Respondent Visio Light, Inc. Based on Entry of Consent Order; Issuance of Consent Order (December 2, 2011); *See* Notice of Commission Determination to Review an Initial Determination Finding Respondent Tianjin Wuqing Huanyu Film and TV Equipment Factory in Default (January 17, 2012); Notice of Commission Determination Not to Review an Initial Determination Terminating Respondent Elation Lighting, Inc. from the Investigation (March 2, 2012); Commission Determination Not to Review an Initial Determination Terminating the Investigation as to Fuzhou F&V Photographic Equipment Co., Ltd. and Shantou Nanguang Photographic Equipment Co., Ltd. Based on Entry of a Consent Order (July 26, 2012).

On November 16, 2012, complainants Litepanels, and the Fotodiox respondents and Ikan (collectively “Consenting Respondents”) filed a joint motion to terminate the investigation based on a consent order stipulation and proposed consent order. At the time the parties filed the joint motion, the investigation was under review by the Commission and no longer before the ALJ. The IA filed a response that was generally in support of the motion, but included an objection to specific language in the consent order. In response to the IA’s objection, the parties submitted a revised proposed consent order

on November 30, 2012. The stipulation and consent order satisfied the IA's objection. Litepanels and the Consenting Respondents assert that the consent order and consent order stipulation do not impose any undue burden on the public health and welfare, competitive conditions in the United States economy, the product of like or directly competitive articles in the United States or to United States consumers. We are not aware of any adverse impact that termination of the investigation as to the Consenting Respondents would have on the public interest. In addition, termination of the investigation as to the Consenting Respondents, as proposed in the motion, is generally in the public interest. Accordingly, the Commission grants the joint motion to terminate the Consenting Respondents and issues a consent order. The remaining respondents are Flolight, Prompter, Cool Lights and Stellar.

On September 7, 2012, the Administrative Law Judge ("ALJ") issued his Final Initial Determination ("ID"), finding a violation of section 337. The ALJ held that a violation occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain LED photographic lighting devices and components thereof that infringe one or more of claims 1, 57-58, and 60 of the '022 patent; claims 1, 2, 5, 16, 18, 19, 25 and 27 of the '652 patent; and claim 19 of the '823 patent. ID at ii. The ALJ further held that no violation of section 337 occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain LED photographic lighting devices and components thereof that infringe claims 17 and 28 of the '823 patent because claims 17 and 28 are invalid as anticipated. *Id.* at ii, 81.

On September 24, 2012, Litepanels, the IA and the Respondents petitioned for review of the ID. On October 2, 2012, the parties filed responses to the various petitions.

On November 13, 2012, the Commission determined to review the ID in part and requested briefing on the issues under review, and on remedy, the public interest and bonding. 77 *Fed. Reg.* 69499-500 (November 19, 2012). The issues reviewed include: (1) the ALJ's determination that the preambles of the asserted independent claims of the '652 patent, the '823 patent and the '022 patent were not limitations and his alternative construction of the preambles; (2) the ALJ's findings of infringement; (3) the ALJ's findings of obviousness and anticipation; (4) the ALJ's construction of the limitation of "an integrated power source" of claim 17 of the '823 patent; and (5) the ALJ's findings on the technical prong of domestic industry as related to the asserted patents. *Id.* The parties filed written submissions and replies regarding the issues under review, and remedy, the public interest, and bonding. The Notice of Review also sought briefing from the parties and the public regarding five questions relating to the public interest. On December 18, 2012, Litepanels filed a Conditional Motion to Strike or Reply to Respondents Reply Brief In Response to the Commission's Notice. On December 27, 2012, Respondents filed a "Response to Complainants' Conditional Motion to Strike or Reply to Respondents' Reply Brief in Support of the Commission's Notice." The Commission has determined to deny Litepanels' motion.

Having examined the record of this investigation, including the ALJ's final ID, and the parties' and public submissions, the Commission has determined that there is a violation of section 337 with respect to the '022 and '652 patents. The Commission has also determined to reverse the ALJ's finding of a violation based on the '823 patent

because the only claim of the '823 patent that Litepanels alleges is practiced by the domestic industry products (*i.e.*, claim 17) is found to be invalid. The Commission has determined to reverse the ALJ and find that the preambles of the asserted patents are limitations and should be construed based on their plain and ordinary meaning. The Commission affirms the ALJ's findings on modified grounds to find: (1) that the "integrated power source" limitation of claim 17 of the '823 patent is construed so that it is not restricted to the battery housing, and may include, but is not limited to, the battery and/or battery housing; (2) that the asserted independent claims of the '652 patent, '823 patent and the '022 patent are infringed; (3) that claims 17 and 28 of the '823 patent are invalid as anticipated; (4) that the asserted claims of the '652 and '022 patents are not invalid; and (5) that the technical prong of domestic industry is met for the '022 and '652 patents and with respect to the '823 patent, that the elements of claim 17 of the '823 patent are practiced by the domestic industry products but finds that Litepanels has not proven that a valid patent claim is practiced by the domestic industry products. As part of the Commission's findings on anticipation and obviousness, the Commission takes no positions on a few limitations as set forth in our accompanying opinion. The Commission adopts the remaining findings of the ALJ, including that the asserted dependent claims of the '652 patent, the '022 patent, and the '823 patent are infringed and that claim 19 of the '823 patent is not invalid.

The Commission has further determined that the appropriate remedy is a general exclusion order prohibiting from entry LED photographic lighting devices and components thereof that infringe claims 1, 57, 58, and 60 of the '022 patent and claims 1-2, 5, 16, 18-19, 25, and 27 of the '652 patent. The Commission has determined that the

public interest factors enumerated in section 337(d) (19 U.S.C. § 1337(d)) do not preclude issuance of the general exclusion order. Finally, the Commission has determined that a bond in the amount of 43 percent of the entered value is required to permit temporary importation during the period of Presidential review (19 U.S.C. § 1337(j)) of LED photographic lighting devices and components thereof that are subject to the order. The Commission's order and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.42-46 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-46 and 210.50).

By order of the Commission.

Lisa R. Barton
Acting Secretary to the Commission

Issued: January 17, 2013

[FR Doc. 2013-01374 Filed 01/23/2013 at 8:45 am; Publication Date: 01/24/2013]